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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/740,698	12/19/2003	Sign Erickson Varner	56086 (71699)	3885

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EXAMINER	
MEHTA, BHISMA	

ART UNIT	PAPER NUMBER
3767	

MAIL DATE	DELIVERY MODE
09/18/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/740,698	VARNER ET AL.	
	Examiner	Art Unit	
	BHISMA MEHTA	3767	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *68-119,122-127,129 and 132-138*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
    See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Bhisma Mehta/
Examiner, Art Unit 3767

Continuation of 11. Applicant's arguments with regards to the 103(a) rejection have been considered but are not deemed persuasive. Even though Weiner et al disclose that the body member (12) is placed in the vitreous fluid, Weiner et al still teach that it is desirable to secure the device in the eye such that the movement of the device is minimized once the device is in position. In addition, as seen in Figure 14 of Weiner et al, the thickness of the various portions of the eye, such as the retina, choroid, and sclera, can vary within one's eye and within individual patient's eyes (see also lines 45-50 of column 5 where Weiner et al discloses that the eye dimensions can vary). Therefore, providing the body member of Weiner et al with a coil shape as taught by Rosenman et al would allow the securement of the device in different areas of the eye regardless of the thickness of the layers of the eye and also in the eyes of all patients. Applicant's arguments in lines 7-11 of page 17 are irrelevant because Weiner et al ('233) clearly disclose securing the device such that movement within the eye is minimized (lines 2-8 of column 6). Similarly, Applicant's arguments in lines 1-6 of page 18 are unclear as Weiner clearly teaches that the portion of the device placed within the vitreous region should be stable (lines 40-50 of column 2) and movement of the device should be minimized. As to Applicant's arguments in lines 7-27 of page 18, even though Rosenman et al disclose a device which is anchored within solid tissue, Rosenman et al also disclose that the device can be implanted within the heart or other organs which can include the eye. Thus, the device of Rosenman et al could be anchored in solid tissue and similarly could be anchored in the eye such that part of the device is within the vitreous region. Furthermore, providing the body member of Weiner et al with a coil shape would allow the device to be securely anchored in the eye regardless of the thickness of the outer layers of solid tissue of the eye. As to Applicant's arguments in lines 1-9 of page 19, providing the body member of Weiner et al with the coil shape of Rosenman et al would provide an additional anchoring advantage or beneficial result to the device of Weiner et al as it would allow the device of Weiner et al to be secured in the eye regardless of the thicknesses of the layer of the eye and this would further allow the device to be used in any area of the eye where treatment such as for vascular diseases, occlusions, infection due to traumatic injury, etc. may be necessary (lines 23-32 of column 10 of Weiner et al).

Continuation of 13. Other: The amendments to the claims and specification have overcome the objections to the specification.